

K. V. SRINIVASA AYYANGAR

A

v.

P. N. VENKATASUBRAMANIA IYER AND OTHERS

January 6, 1966

[A. K. SARKAR, J. R. MUDHOLKAR AND R. S. BACHAWAT, JJ.]

B

Madras Agriculturists' Relief Act (4 of 1938), s. 8 Explanation III—Scope of.

In 1932, the appellant renewed a promissory note executed in 1930 by his brother in favour of N, the father of the respondents, for Rs. 1,000. The promissory note was renewed in 1937, 1940 and 1944 for the principal amount together with interest. The last 3 promissory notes were taken in the name of a Bank which was admittedly under the control of N. In 1946, at the instance of the appellant, N paid off the debt due from the appellant to the Bank and obtained a promissory note in his own favour for Rs. 10,600, the amount then due. As no repayment was made, N instituted a suit on the original side of the High Court which was decided by a judge sitting singly. Applying Explanation III to s. 8 of the Madras Agriculturists' Relief Act, 1938, he gave a decree only for Rs. 1,350 together with interest at 6½% from the date of the Act. In appeal therefrom under the Letters Patent, the High Court held that the respondents were entitled to a decree for the entire amount of Rs. 10,600 with interest at 6½%.

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Before this Court, it was contended that, under the Explanation as amended by Act 24 of 1950, once it was found that a document was in renewal of a previous debt the benefit of s. 8 would be available was promisor even if the creditor in whose name the debt was renewed was different from the one who had originally advanced the loan and also even where the original debtor was different from the one who executed the document under which the debt was renewed.

E

HELD : Though the requirement of the Explanation pertaining to the debtor was satisfied in the sense that the same person had been the debtor, the requirement with respect to the creditor was not satisfied. The benefit of the Act would be available to a debtor if the renewal was in favour of: (a) the same creditor; or (b) any other person acting in his behalf; or (c) any other person acting in his interest. Since the Bank has an independent existence, even though the controlling interest herein was with N, it would not be correct to say that there was identity between him and the Bank. Neither was there any material to show that the Bank acted on N's behalf when the appellant executed the promissory notes in favour of the Bank; and, even if the words "in the interest of" mean "for the benefit of" it cannot be said that the Bank, in obtaining the promissory notes in renewal of the original debt was acting in N's interest. Therefore, the Explanation was not available to the appellant. [212 D-G; 213 A-E]

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 543 of 1963.

H

Appeal from the judgment and decree, dated October 10, 1958 of the Madras High Court in O.S. Appeal No. 1 of 1954.

A *T. V. R. Tatachari*, for the appellant.

M. Sundaram, K. Jayaram and *R. Thiagarajan*, for respondent No. 1.

The Judgment of the Court was delivered by

B **Mudholkar, J.** This is an appeal from a judgment of the Madras High Court modifying the decree passed by a single Judge of that High Court in a suit for recovery of money.

C Admittedly the appellant had executed a promissory note at Madras for a sum of Rs. 10,600 in favour of one Narayana Iyer, since deceased, on January 28, 1946 and agreed to pay interest on that amount at 12% p.a. It is also admitted that no repayment was made by the appellant. Narayana Iyer, therefore, instituted a suit against him for recovery of a sum of Rs. 14,402-5-0, which includes interest upon the sum of Rs. 10,600.

D The appellant contended that the promissory note was only a renewal of a previous promissory note which itself as well as three earlier promissory notes were in renewal of the original promissory note for Rs. 1,000 executed in the year 1930. According to the appellant that promissory note was executed by his brother but was renewed by the appellant himself in the year E 1932; that this promissory note was renewed on January 11, 1937 by him and that at that time Narayana Iyer had given an additional amount of Rs. 350 to him. The amount for which this promissory note was executed was Rs. 4,000 and it included interest on the first advance up to that date. Narayana Iyer, F however, instead of taking a promissory note in his own name took it in the name of General Bank which is a private limited company which admittedly was under his control. The debt was renewed in favour of the General Bank on January 3, 1940 by executing a fresh promissory note for Rs. 5,650 on that date and again on September 13, 1944 when it was renewed by obtaining G a promissory note for Rs. 9,275. According to the respondents Narayana Iyer paid off the dues to the General Bank at the instance of the appellant and obtained a promissory note in his favour for Rs. 10,600. As the amount was not paid, Narayana Iyer instituted the suit out of which this appeal arises. He, H however, died during the pendency of the suit and is now represented by his sons, the respondents. Upon the aforesaid facts and the further fact that the appellant is an agriculturist he claimed that he was entitled to the benefits of the Madras Agricul-

turists Relief Act IV of 1938. He claimed that under the provisions of that Act he was entitled to have the debts scaled down.

His plea was upheld by the learned single Judge of the High Court who held that the respondents after scaling down the interest as provided in the Act were entitled to a sum of Rs. 1,350 together with interest thereon at 6½% from March 22, 1938 up to the date of the decree. In the appeal preferred by the respondents under the Letters Patent the appeal court held that the respondents were entitled to a decree for the entire amount for which the promissory note was executed, that is, Rs. 10,600 together with interest thereon at 6½% p.a. In coming to this conclusion the appeal court placed an interpretation on explanation III to s. 8 of the Act different from that placed by the learned single Judge.

Section 7 of the Act provides that all debts payable by an agriculturist at the commencement of the Act shall be scaled down in accordance with the provisions of Chapter II. The Act received assent of the Governor General on March 11, 1938 and was first published in the Official Gazette on March 22, 1938 and must be deemed to have come into force as from the former date. Section 8 provides for the scaling down of debts incurred before December 1, 1932. Sub-section (1) thereof says that all interest outstanding on the 1st of October, 1937 against an agriculturist shall be deemed to be discharged and only the principal outstanding on that date shall be deemed to be the amount repayable by the agriculturist debtor. Sub-sections (2), (3) and (4) of that Act deal with classes of cases in which payments have been made from time to time by the debtor to the creditor. It is not necessary to refer to them because even according to the appellant he had not made any repayments before the execution of the promissory note in the suit. It is common ground that explanations I, II and IV have no application to the present case. The only explanation which is relevant is explanation III. This explanation has been twice amended. The original explanation was as follows :

“Where a debt has been renewed or included in a fresh document in favour of the same creditor the principal originally advanced by the creditor together with such sums, if any, as have been subsequently advanced as principal shall alone be treated as the principal sum repayable by the agriculturist under this section.”

A The amending Act 23 of 1948 substituted for it the following :

B “Where a debt has been renewed or included in a fresh document executed before or after the commencement of this Act, whether by the same or a different debtor and whether in favour of the same or a different creditor the principal originally advanced together with such sums, if any, as have been subsequently advanced as principal shall alone be treated as the principal sum repayable under this section.”

C This was amended by Madras Act 24 of 1950 and now runs thus :

D “Where a debt has been renewed or included in a fresh document executed before or after the commencement of this Act, whether by the same debtor or by his heirs, legal representatives or assigns or by any other person acting on his behalf or in his interest and whether in favour of the same creditor or of any other person acting on his behalf or in his interest, the principal originally advanced together with such items, if any, as have been subsequently advanced as principal shall alone be treated as the principal sum repayable under this section.”

E It is common ground that it is the explanation which was amended by Act 24 of 1950 which applies to the case before us. It will be seen that under the original explanation the benefit of sub-s. (1) of s. 8 was available only in cases where the debt had been renewed in favour of the same creditor as the one from whom it was originally obtained. It is contended on the appellant's behalf that by virtue of the amendment of 1948 the benefit of the provision was available even if the creditor in whose name the debt was renewed was different from the one who had originally advanced the loan and also even where the original debtor was different from the one who executed the document under which the debt was renewed.

G It is pointed out that the second amendment was necessitated by reason of certain decisions of the Madras High Court holding that the words “different creditor” in Explanation III to s. 8 did not include a third party in whose favour the debtor had executed a document renewing an earlier debt. According to learned H counsel this interpretation defeated the object which the Legislature had in view in amending Explanation III in 1948 and that, therefore, that explanation was amended a second time to make it

clear that once it is found that a document was in renewal of a previous debt the benefit of s. 8 would be available to the promisor whether the person renewing it or the person in whose favour it is renewed is different.

It is unnecessary for us to consider what the reason for amending Explanation III by Act 23 of 1948 was. All that we are concerned with is the explanation as amended by Act 24 of 1950. By virtue of this explanation the benefit of s. 8(1) would be available in a case where (a) a debt has been renewed or included in a fresh document; and where that is done

- (b) (i) by the same debtor, or
- (ii) by his heirs, legal representatives or assigns; or
- (iii) by any other person acting on his behalf; or
- (iv) by any other person acting in his interest.

Such a transaction will be entitled to the benefit of the Act if the renewal or fresh agreement is in favour of (a) the same creditor; or (b) of any other person acting in his behalf or (c) any other person acting in his interest. In the instant case though the debtor in the transaction of 1930 was stated to be the appellant's brother, in all subsequent transactions it was the appellant who was the debtor. It would follow, therefore, that the requirements of the explanation pertaining to the debtor are satisfied in the sense that the same person has been the debtor. The second requirement of the explanation is with respect to the creditor. As already stated, after 1940 it was not Narayana Iyer but the General Bank which was the creditor up to January 28, 1946 on which date the promissory note in suit was executed by the appellant in his favour. The General Bank has an independent existence and even though the controlling interest therein was with Narayana Iyer and his family it would not be correct to say that there is an identity between that bank and Narayana Iyer. Mr. Tatachari, however, contended that it was Narayana Iyer who was the original creditor and that as he had full power of management and control with respect to the General Bank he went on obtaining promissory notes from the appellants, sometimes in his own favour and some times in favour of the Bank. For all practical purposes, therefore, according to the appellant, the creditor has been the same throughout. We cannot accept this argument in the absence of any material to show that the Bank acted on his behalf when the appellant executed the promissory notes, dated January 3, 1940 and September 30, 1944 in favour of the Bank. The contention

A of Mr. Tatachari then is that the Bank in obtaining those promissory notes in renewal of the original debt was acting in his interest and that, therefore, the explanation was available to the appellants. In the High Court it was urged that when the appellant executed the promissory note dated January 28, 1946 Narayana Iyer acted in the interest of the Bank. The ground on which the argument advanced before the High Court and the argument advanced before us is, however, the same. It is that the words "in the interest of" mean "for the benefit of". Even assuming that that is the meaning to be given to these words the argument of learned counsel cannot be sustained on the facts of this case. It has been found as a fact by the appeal court that Narayana Iyer actually paid Rs. 10,600 by cheque in favour of the General Bank Ltd., to the credit of the appellants. It has also been found by the High Court that Narayana Iyer paid off the debt due from the appellants to the Bank at the request of the appellants for discharging the appellants' liability upon the promissory note executed by him in favour of the Bank. These findings of the High Court have not been seriously challenged before us and in our opinion quite rightly. In view of these findings the contention of learned counsel that the payment was made "in the interest of the creditor" cannot be sustained. In the circumstances, therefore, we uphold the decree of the appeal court and dismiss the appeal with costs.

Appeal dismissed.